

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

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## PCT

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

|   |  |  |  |
|---|--|--|--|
| Applicant's or agent's file reference<br><b>068911.0106</b>   |  | Date of mailing<br>(day/month/year) <b>22 SEP 2005</b> |  |
| International application No.<br><b>PCT/US05/06147</b>  |  | FOR FURTHER ACTION<br>See paragraph 2 below            |  |
| International filing date (day/month/year)<br><b>26 February 2005 (26.02.2005)</b>  | Priority date (day/month/year)<br><b>27 February 2004 (27.02.2004)</b> |  |  |
| International Patent Classification (IPC) or both national classification and IPC<br><b>IPC(7): A61 K 31/557, 31/12, 35/78 and US Cl.: 424/778; 514/690</b> |  |  |  |
| Applicant<br><b>METAPROTEOMICS, LLC</b>   |  |  |  |

1. This opinion contains indications relating to the following items:

- ☒ Box No. I      Basis of the opinion
- ☐ Box No. II      Priority
- ☐ Box No. III      Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV      Lack of unity of invention
- ☒ Box No. V      Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI      Certain documents cited
- ☐ Box No. VII      Certain defects in the international application
- ☐ Box No. VIII      Certain observations on the international application

### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

|  |  |
|--|--|
| Name and mailing address of the ISA/ US<br>Mail Stop PCT, Attn: ISA/US<br>Commissioner for Patents<br>P.O. Box 1450<br>Alexandria, Virginia 22313-1450<br>Facsimile No. (703) 305-3230 | Authorized officer <i>Maria J. Watse</i><br>Sreeni Padmanabhan<br>Telephone No. 571-272-0600 |
|--|--|

Form PCT/ISA/237 (cover sheet) (January 2004)

**D. E. F. M. 2**

DOCKETED

RESPONSE TO **RESP. TO WO**

DUE DATE **12/22/03**

BAR DATE **12/27/05**

} NON EXT.

**12/6/05**

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WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/06147

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/US05/06147

**Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

|                               |                    |     |
|-------------------------------|--------------------|-----|
| Novelty (N)                   | Claims <u>NONE</u> | YES |
|                               | Claims <u>1-32</u> | NO  |
| Inventive step (IS)           | Claims <u>NONE</u> | YES |
|                               | Claims <u>1-32</u> | NO  |
| Industrial applicability (IA) | Claims <u>1-32</u> | YES |
|                               | Claims <u>NONE</u> | NO  |

2. Citations and explanations:

Claims 1-15 lack novelty under PCT Article 33(2) as being anticipated by Dente (US 6,277,396).

Dente discloses a composition comprising a fraction isolated from hops and a thermogenic substance methylxanthines such as caffeine. See column 5, lines 40-65; column 2, lines 34-42. It is further disclosed that the composition can be formulated for oral, rectal, topical or nasal administration. The composition contains pharmaceutically acceptable carriers. See column 8, lines 4-30. Thus Dente anticipates instant claims 1-15.

Claims 16-32 lack novelty under PCT Article 33(2) as being anticipated by Babish et al. (US 2003/0096027).

Babish et al. discloses a composition comprising curcuminoid species and a fraction isolated from hops. See page 2, paragraphs [0015]-[0018]; and page 3, paragraphs [0029]-[0033]. A method of treating inflammation using said composition is also disclosed. See page 11, claims 1-3, claim 14, claims 17-21. Thus Babish anticipates instant claims 16-32.

Claims 16-32 lack novelty under PCT Article 33(2) as being anticipated by Newmark et al. (US 6,391,346).

Newmark et al. discloses a composition comprising curcuminoid species and a fraction isolated from hops. See abstract; column 4, line 50-column 5, line 22. A method of treating inflammation using said composition is also disclosed. See column 10, claims 18-20. Thus Newmark anticipates instant claims 16-32.

Claims 1-32 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.